

INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and COMMERCIAL LEASE DRAFTING (B-11) checklists. Unless otherwise indicated, this checklist is primarily intended for use by the lawyer acting for the landlord. The checklist is current to September 4, 2024.

LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

NEW DEVELOPMENTS

- **Land Owner Transparency Act.** The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the “*LOTA*”) came into force on November 30, 2020 (except for certain specified provisions that came into force on April 30, 2021). The *LOTA* also includes the Land Owner Transparency Regulation, also made effective November 30, 2020. Under the *LOTA*, the Land Title and Survey Authority will operate a Land Owner Transparency Registry (the “*LOTR*”), which is a public database of information on individuals who have an indirect interest in land, such as through a company, trust, or partnership. By the definition of “interest in land” under the *LOTA*, a tenant registering a lease in the land title office that has a remaining term of more than 10 years will have to concurrently file a transparency declaration, unless the tenant or the leased lands are exempt (for example, if the tenant is a public company or a strata corporation, or if the lands are treaty or reserve lands). If the tenant is a reporting body under the *LOTA*—which includes most corporations, trusts, and partnerships, subject to limited exemptions—it will also have to file a transparency report upon registration and any time there is a change in the tenant’s interest holders or beneficial owners.

Any tenant who has an existing lease registered in the land title office, with a remaining term of more than 10 years when the *LOTA* came into force on November 30, 2020, is also required to file a transparency report with the *LOTR* by November 30, 2022. Landlords who were registered owners of property in any land title office in British Columbia when the *LOTA* came into force, or who become such a registered owner thereafter, will also be required to file a transparency declaration, and if applicable, a transparency report. For further information, see the Land Owner Transparency Registry website at <https://landtransparency.ca/resources/> and also the course presentation and materials by S. Carter, R. Danakody, and C.R MacDonal, “Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry”, in *Residential Real Estate Conference 2020* (CLEBC, 2020), and by R. Dankody and T. Norman, “Land Owner Transparency Registry (*LOTR*)” in *Real Estate Development Update 2021* (CLEBC, 2021), and by R. Danakody and T. Norman, “Land Owner Transparency Registry (*LOTR*)” in *Real Estate Development Update 2021* (CLEBC, 2021), available through CLEBC Courses on Demand.

- **Transparency register.** Private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 must create and maintain a “transparency register” of information about “significant individuals” (as defined by s. 119.11 of the *Business Corporations Act*). Consult the *Business Corporations Act* and British Columbia government websites to confirm compliance. The *Business Corporations Amendment Act, 2023*, S.B.C. 2023, c. 20 will introduce a new corporate transparency registry and transparency requirements by 2025.

OF NOTE

- **Aboriginal law.** Special considerations apply to First Nations lands. The Framework Agreement on First Nation Land Management (the “Framework Agreement”) was ratified as the central authority by the *Framework Agreement on First Nation Land Management Act*, S.C. 2022, c. 19, s. 121, which came into force on December 15, 2022. The Framework Agreement recognizes First Nations’ inherent right to govern their lands, and signatory First Nations assume the administration and law-making authority over their lands. If a lease, mortgage, land conveyance, or transfer of leasehold interest involves First Nation lands, consider seeking the advice of a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the “Aboriginal Law” page on the “Practice Areas” section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.
- **Money laundering—companies, trusts, and other entities.** As a means of laundering money, criminals use ordinary legal instruments, (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags, and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime, or fraud, they should make enough inquiries to determine whether it is appropriate to act and make a record of the results of their inquiries (*BC Code* rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the anti-money laundering resources on the Law Society’s Client ID & Verification [webpage](#) including “Forming Companies and Other Structures—Managing the Risk”; the Source of Money FAQs, Risk Assessment Case Studies for the Legal Profession; the Red Flags Quick Reference Guide; the Risk Advisories for the Legal Profession regarding real estate, shell corporations, private lending, trusts, and litigation; and free online Law Society and Federation of Law Societies courses. Also see the Discipline Advisories (an updated list can be found at <https://www.lawsociety.bc.ca/for-lawyers/discipline-advisories/>), which include Client ID & Verification, Country/geographic risk and Private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.
- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).
- **Additional resources.** For detailed information about commercial lease procedures, including various precedent leases and commentary, see *Commercial Leasing: Annotated Precedents* (CLEBC, 1996–).

CONTENTS

1. Initial Contact
2. Initial Interview
3. After the Initial Interview
4. Offer or Agreement to Lease
5. Preparing the Lease

6. Concluding the Agreement
7. Closing the File

1. INITIAL CONTACT		
1.1	Arrange the initial interview.	<input type="checkbox"/>
1.2	Ask the client to bring to the initial interview all relevant information, including offers to lease, letters of intent, terms sheet(s), and leases. Find out the names and addresses of the other party(ies). Ensure that you have the correct names of the landlord, the tenant, and the indemnifier, if any.	<input type="checkbox"/>
1.3	Conduct a conflicts of interest check. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
1.4	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and source of money for financial transactions. Complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Rule 3-110).	<input type="checkbox"/>

2. INITIAL INTERVIEW		
2.1	Discuss the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
2.2	See item 1.2 regarding identifying other parties. Obtain the names and addresses of the other parties' counsel. Clarify your role in the transaction and that of other advisors to the client. Consider the application of the <i>Land Owner Transparency Act</i> , S.B.C. 2019, c. 23 (the "LOTA") and additional detailed information that may be required regarding individuals who hold an indirect interest in the land to file a transparency declaration and transparency report, if applicable. See above under "New developments" and "Of note".	<input type="checkbox"/>
2.3	Discuss the nature of the transaction and the steps you will be taking.	<input type="checkbox"/>
2.4	Discuss the client's objectives and the background of the leasing transaction.	<input type="checkbox"/>
2.5	If you are acting for the landlord, find out whether you will be drafting leases for all tenancies in a development, and whether a standard form of lease already exists for the development.	<input type="checkbox"/>
2.6	Collect information and discuss the provisions of the lease or offer to lease, referring to the COMMERCIAL LEASE DRAFTING (B-11) checklist and noting any special features of the transaction. Include:	<input type="checkbox"/>
	.1 Type of building or development (e.g., shopping centre, office, stand-alone, or strata lot).	

	.2 Whether the building is existing (and, if so, whether there are existing tenants), new, or planned.	
	.3 The type of tenants who are or will be leasing, and whether their leases are or will be similar (if not, the landlord will probably require that the full leases not be registered).	
	.4 The landlord's costs, including which costs the landlord will absorb and which are to be recovered from the tenants (e.g., is the lease to be on a completely net basis? Who is responsible to pay for structural or capital replacements or repairs?)	
	.5 The way in which amounts (e.g., rent, costs) payable by each tenant are to be determined and allocated. Consider whether a particular tenant's consumption may be high (e.g., a fast food outlet's garbage output or restaurant's water usage) and require allocation based on consumption.	
	.6 What will the term of the lease be? Will there be any renewal or extension rights, if there are, what are the conditions to the exercise of such rights? During any renewal or extension, will the terms of the lease remain the same or are there certain revisions that should be expressly set out (e.g., fixturing periods, rent free periods, or any other inducements)?	
	Consider and address how rent will be determined for any renewal or extension terms (e.g., will it be based on fair market rent of a premise of similar size, condition and location? Are there any leasehold or tenant improvements that should be excluded from the calculation of fair market rent?).	
	.7 Who is responsible to undertake what maintenance, repairs, and replacements (e.g., landlord is responsible to make structural repairs, and repairs of common areas)? Consider limitations if it is strata property, given requirements for strata corporation to deal with common property. (See item 2.6.14 in this checklist.)	
	.8 Financing arrangements and lender's requirements. If the landlord has not yet obtained financing, consider provisions allowing for cancellation if they fail to do so. Inquire as to what terms, if any, the lender requires in the landlord's leases and whether the lender will agree to provide a Non-Disturbance Agreement. (If acting for a tenant, consider whether the tenant intends to mortgage the lease and the requirements of the tenant's lender.)	
	.9 Insurer's requirements.	
	.10 Whether estoppel certificates are required.	
	.11 Whether any inducements are to be given to any tenants.	
	.12 Any removal of leasehold improvements or alterations and restoration rights or obligations (including environmental remediation obligations), at the end of the term of the lease.	
	.13 Special shopping centre/retail considerations:	
	(a) Whether the rent should allow the landlord to participate in sales by percentage rent (and if so, what the minimum rent and percentage rent should be).	

	(b) The extent to which the landlord wants to control tenant use and tenant mix by restrictive covenants (where a restrictive covenant grants a tenant exclusive right to carry on a particular activity, ensure that activity is an excluded activity in all other tenants' leases).	
	(c) Covenants regarding operation for entire premises and fully stocked/employee-serviced.	
	(d) Joint landlord and tenant actions (e.g., promotion fund, official opening of centre).	
	(e) Tenants' use of common areas and parking.	
	(f) Whether there are any "anchor-tenant" requirements.	
	.14 If the premises are strata property or a building, consider the need for an easement or other rights from the strata corporation or landlord, as applicable—and appropriate modifications to the landlord's obligations—with respect to common property, impact of bylaws, insurance to be maintained by the strata corporation or landlord, etc. See chapter 21 (Strata Clauses for Commercial Leases) in <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–).	
	.15 Various types of defaults and the proposed consequences.	
	.16 Circumstances in which the lease can or will be terminated.	
	.17 Whether any security will be taken by the landlord to secure payment of rent (e.g., deposit, letter of credit, personal property security interest).	
	.18 Whether any particular services are available and who is to pay for them.	
	.19 What rules and regulations the landlord wants attached to the lease.	
	.20 Whether the lease is to be registered with the LTSA in the Land Title Office (the "LTO"), and if so at whose expense. Consider whether a short form of lease should be registered so that financial aspects of the transaction are not disclosed to the public (e.g., tenant inducements, rent). Also consider whether easements, licences, etc. are required over the land. If the lease is not to be registered in the LTO, make that explicit in the lease, to avoid the effect of <i>Property Law Act</i> , R.S.B.C. 1996, c. 377, s. 5(2). Consider whether property transfer tax is payable upon registration, which might influence whether the lease is registered. Consider whether a reference plan is required for a lease of part of a building, if the lease is to be registered. Consider also the application of the <i>LOTA</i> and whether a transparency declaration or transparency report is required to be filed.	
2.7	If the land is part of a First Nation's reserve or First Nation's treaty lands, note that there are special considerations (see "Of note" in this checklist).	<input type="checkbox"/>
2.8	Discuss the nature of an offer or agreement to lease, and determine whether it is desirable to use one.	<input type="checkbox"/>
2.9	Get instructions to draft the lease or offer to lease and any supplementary documents required (e.g., guarantee or indemnity, environmental indemnity, or a tenant fixturing loan agreement—see item 3.9 in this checklist).	<input type="checkbox"/>

2.10	If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society resource available at www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Ltrs-NonEngagement.pdf) (PDF).	<input type="checkbox"/>
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3.	AFTER THE INITIAL INTERVIEW	
3.1	Confirm your retainer. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
3.2	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions (see item 1.4 in this checklist).	<input type="checkbox"/>
3.3	If you are acting for a company, unless acting under a joint retainer, be clear that you are acting for the company and not for individuals associated with the company, such as the shareholders or directors, and verify who has the authority to give instructions (<i>Code of Professional Conduct for British Columbia</i> (“BC Code”), rule 3.2-3). Consider having a directors’ resolution confirm your retainer and giving one officer or director the authority to instruct you. Communicate with counsel representing the other parties that you are acting for your client. If other parties are unrepresented, urge them in writing to get independent legal representation. Make it clear to the other parties that you are not protecting their interests and that you are acting exclusively in the interests of your client; see <i>BC Code</i> , rule 7.2-9.	<input type="checkbox"/>
3.4	Conduct relevant searches (or confirm in writing if other advisors such as leasing agents are conducting such searches), such as:	<input type="checkbox"/>
	.1 LTO.	
	.2 Zoning.	
	.3 Property taxes.	
	.4 Environmental inquiries (Contaminated Site Registry, Ministry of Environment and Climate Change Strategy, municipality, investigation of property).	
3.5	Conduct company search on corporate parties to confirm name of each corporate party and ensure each corporate party’s annual filings are up to date.	<input type="checkbox"/>
3.6	If the premises to be leased are on an unsubdivided portion of a legal lot, consider the effect and application of <i>Land Title Act</i> , ss. 73(1) and 73.1. Note that s. 73(3) provides that s. 73(1) does not apply to a subdivision for the purposes of leasing a building or part of a building.	<input type="checkbox"/>
3.7	If the premises are strata property, determine whether any special levies have been assessed that will be passed on to the tenant as part of operating costs, or if any will be in future. Also, review the bylaws and rules of the strata corporation. See also item 2.6.14 in this checklist.	<input type="checkbox"/>
3.8	Discuss the results of your searches and inquiries with the client.	<input type="checkbox"/>

3.9	Prepare or obtain supplementary documents, such as:	<input type="checkbox"/>
	.1 For corporate parties:	
	(a) Certificate or opinion letters from lawyers, to include matters such as: corporate status, good standing, incumbency, authorization, execution, and delivery.	
	(b) Directors' resolution and shareholders' resolution, if required (certified copies).	
	.2 Estoppel certificates.	
	.3 Non-disturbance agreement, if you are acting for the tenant, and an attornment agreement, if required by the lender.	
	.4 Subordination agreements.	
	.5 Insurance policy or certificate of insurance.	
	.6 Surveyed plan, if the lease includes a portion of building.	
	.7 Notice of interest under the <i>Builders Lien Act</i> , S.B.C. 1997, c. 45, if you are acting for the landlord and the tenant plans to carry out any improvements to the premises (see <i>Builders Lien Act</i> , s. 3).	
	.8 Copies of current bylaws and rules, if the premises are a strata lot.	
	.9 Tenant fixturing loan agreement, where the landlord takes a security interest in fixtures on the premises. This is especially desirable if the landlord has provided any incentives or allowances for fixturing. Ensure that registrations in the LTO and Personal Property Registry are made, and that no purchase money security interest ("PMSI") is claimed by another lender or lessor of goods.	
	.10 Priority agreements from any creditors of the tenant who have taken a security interest in the tenant's fixtures, where the landlord takes a security interest in fixtures on the premises.	
	.11 Guarantee or indemnity agreement in respect of tenant's obligations under lease, including payment of rent. For detailed information about guarantees and indemnities in commercial leasing, including a precedent indemnity agreement, see chapter 19 (Guarantees and Indemnities in Commercial Leases) in <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996-).	
	.12 Property transfer tax return, if the lease is to be registered in the LTO.	
	.13 Transparency declaration and transparency report under <i>LOTA</i> , if applicable.	

4.	OFFER OR AGREEMENT TO LEASE	
4.1	If so instructed, draft an offer or agreement to lease, including:	<input type="checkbox"/>
	.1 Parties.	
	.2 Offer, acceptance, and consideration.	

	.3 Basic provisions to be included in the lease (see the COMMERCIAL LEASE DRAFTING (B-11) checklist).	
	.4 Work to be done by both parties.	
	.5 Inducements to be offered, including free rent. Consider the effect of GST/PST on inducements and ownership of tenant improvements. Commercial lease payments are generally subject to GST, but commercial leases would not generally include PST, which applies to tangible personal property and some services. Both PST and GST are generally applicable to legal services. Further information about the GST and PST can be found at www.canada.ca/en/services/taxes.html and www2.gov.bc.ca , and see also chapter 14 (GST and Commercial Leasing) in <i>Commercial Leasing: Annotated Precedents</i> (CLEBC, 1996–).	
	.6 Provision that the tenant’s interest in affixed goods (fixtures) does not arise until 24 hours after affixation, to attempt to avoid application of the <i>Personal Property Security Act</i> , R.S.B.C. 1996, c. 359, s. 36(3).	
	.7 Due diligence period if further investigation of the premises to be leased is required, or if permits need to be obtained (e.g., building permits if premises are being renovated or built).	
	.8 Termination in the event that conditions precedent, if any, are not met.	
	.9 Security deposit/security for rent under the lease.	
	.10 Legal effect of an offer after the lease is executed.	
	.11 Lease form as an attachment.	
	.12 Plan of the premises as an attachment (avoid using colours since often photocopies and scans are black and white, and colours are lost).	
	.13 Rights or prohibitions on assignment.	
	.14 Provision that confirms that the parties will keep the terms of the offer confidential.	
	.15 Binding effect of offer. Are the terms of the offer intended to be non-binding unless expressly stated otherwise (e.g., confidentiality clause) or is the offer intended to be binding subject to certain conditions?	
4.2	Discuss the offer or agreement to lease with the client and revise as required.	<input type="checkbox"/>
4.3	Discuss the offer or agreement to lease with the other party and revise as required, discussing revisions with the client.	<input type="checkbox"/>
4.4	Have the offer or agreement to lease executed by both parties.	<input type="checkbox"/>
5.	PREPARING THE LEASE	
5.1	Prepare an outline of the lease, indicating the clauses from your precedent file that will be included (see the COMMERCIAL LEASE DRAFTING (B-11) checklist).	<input type="checkbox"/>

5.2	Prepare the first draft.	<input type="checkbox"/>
5.3	Review the first draft, checking each segment to ensure that it achieves the client's objectives, and checking the document as a whole to ensure that it is internally consistent. Make any necessary corrections and prepare a second draft.	<input type="checkbox"/>
5.4	Go over the second draft with the client, or send it to the client with a request that the client review it and note any changes or questions. Discuss it with the client.	<input type="checkbox"/>
5.5	Make any changes required to the second draft and send copies to the other party(ies) or their lawyer(s) for comment. Review any alterations with the client.	<input type="checkbox"/>
5.6	Prepare the final lease, and arrange for signing.	<input type="checkbox"/>

6.	CONCLUDING THE AGREEMENT	
6.1	Update searches.	<input type="checkbox"/>
6.2	Ensure proper signing and execution of the lease:	<input type="checkbox"/>
	.1 Prepare a general instrument (Form C), if the lease is to be registered, and ensure compliance with LTO format requirements, including requirements for property transfer tax return and payment of any such tax and transparency declaration and transparency report under the <i>LOTA</i> .	
	.2 Have the lease signed by an authorized signatory.	
	.3 Execute it before a certifying officer (lawyer, commissioner, notary public), if it is to be registered in the LTO.	
6.3	Ensure proper signing and execution of supplementary documents.	<input type="checkbox"/>

7.	CLOSING THE FILE	
7.1	Arrange for preparation of an explanatory plan of survey (<i>Land Title Act</i> , ss. 74 and 99) and register the plan and the lease in the LTO unless the lease provides otherwise. (The tenant usually arranges and pays for preparation of the plan and registration.)	<input type="checkbox"/>
7.2	Prepare and file a property transfer tax return. If the lease is for 30 years or less, including renewals, file a "special" return.	<input type="checkbox"/>
7.3	Prepare and file a transparency declaration and transparency report under the <i>LOTA</i> if applicable.	<input type="checkbox"/>
7.4	If the landlord obtained a security interest in fixtures on the premises, file a financing statement in the Personal Property Registry and a fixturing notice in the LTO, if appropriate.	<input type="checkbox"/>

7.5	If the tenant may be carrying out any improvements to the premises, file a notice of interest under the <i>Builders Lien Act</i> in the LTO (see <i>Builders Lien Act</i> , s. 3). If you are acting for a landlord of a shopping centre or an office tower where tenants are often carrying out improvements to the premises, file a generic notice of interest in the LTO with respect to the whole building or development.	<input type="checkbox"/>
7.6	If there are several notable dates within the lease (for example, dates the landlord's or tenant's work is to be completed, fixturing period, date the premises are to be delivered, commencement date, rent commencement date, date by which renewal or extension options must be exercised, and so on), you could prepare a list of critical dates for the client and confirm that you will not be responsible for bringing forward dates or sending them reminders.	<input type="checkbox"/>
7.7	Prepare a reporting letter and account as soon as practicable after closing. Include copies of relevant documents, details of registration, and details regarding your searches. Diarize the renewal or extension option date and other deadlines for the tenant, or advise the tenant that you are not taking responsibility for these items.	<input type="checkbox"/>
7.8	Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>